

EXHIBIT A

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 20

In the Matter of:

Mineral Resources, LLC,

Case No. 20-RC-125608

Employer,

and

Operating Engineers Local
Union 3, International Union
of Operating Engineers, AFL-
CIO

Petitioner.

Place: Marysville, California

Dates: April 18, 2014

Pages: 1 through 167

Volume: 1

OFFICIAL REPORTERS

AVTranz
E-Reporting and E-Transcription
845 North 3rd Avenue
Phoenix, AZ 85003
(602) 263-0885

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

In the Matter of:

MINERAL RESOURCES, LLC,

Employer,

and

OPERATING ENGINEERS LOCAL
UNION 3, INTERNATIONAL UNION
OF OPERATING ENGINEERS, AFL-
CIO

Petitioner.

Case No. 20-RC-125608

The above-entitled matter came on for hearing, pursuant to notice, before **ELVIRA PEREDA**, Hearing Officer, at the Yuba County Government Center, Board Chambers, 915 8th Street, Marysville, California, 95901, on **Friday, April 18, 2014, at 11:05 a.m.**

AVTranz

845 North 3rd Avenue, Phoenix, Arizona 85003
www.avtranz.com • (800) 257-0885

1 HEARING OFFICER PEREDA: Okay, let's move forward.

2 Union, what is your position on supervisors?

3 MR. NELSON: We -- our position remains the same, that
4 supervisors, as defined by the Act, are excluded from the Unit.

5 HEARING OFFICER PEREDA: And also excluded in any unit
6 found appropriate by the Regional Director should be the plant
7 manager. Does the Employer stipulate to that?

8 MR. COOK: Yes.

9 HEARING OFFICER PEREDA: Does the Union stipulate to that?

10 MR. NELSON: Yes.

11 HEARING OFFICER PEREDA: And also excluded in any unit
12 found appropriate by the Regional Director should be the off-
13 site hauling. Does the Employer stipulate to that?

14 MR. COOK: Yes.

15 HEARING OFFICER PEREDA: Does the Union stipulate to that?

16 MR. NELSON: Yes.

17 HEARING OFFICER PEREDA: Okay. The stipulations are
18 hereby received.

19 So now it is my understanding that the issues we are going
20 to litigate here today are the unit composition, meaning
21 whether or not the lead men, the daytime and nighttime lead
22 men, or whatever their proper title is, whether or not they
23 should be included in the unit. And also, the unit did amend
24 to include in the petition the on-site mining operations,
25 including on-site hauling and removal of overburden. So that

1 is another issue.

2 Are there any other issues?

3 MR. COOK: I have a motion before we start, but I have no
4 issue with the issues as you've presented them.

5 HEARING OFFICER PEREDA: Okay. And what is the Employer's
6 position on the night -- the daytime and nighttime lead men?

7 MR. COOK: So they dayshift lead person and the evening
8 shift supervisors -- supervisor are supervisors as defined
9 under the National Labor Relations Act and should be excluded
10 from the unit. Obviously, they would be ineligible to vote as
11 a consequence of that. That's our position.

12 HEARING OFFICER PEREDA: And what is the Union's position
13 on this issue?

14 MR. NELSON: Our position is that the daytime lead and the
15 person whom was given the title nighttime, in fact -- are, in
16 fact, lead men not supervisors, and therefore, should be
17 included in the unit and vote in this election.

18 HEARING OFFICER PEREDA: Okay. And regarding the other
19 classification that the Union amended into the petition, the
20 on-site mining operations, including the on-site hauling and
21 the removal of overburden, what is the Employer's position on
22 that?

23 MR. COOK: That work is not unit work and should be
24 excluded from the bargaining unit.

25 HEARING OFFICER PEREDA: Okay.

1 A We've -- in 2009? We've had a couple since I've been
2 there. It could have been Ted Hale or it was --

3 Q I'm really referring to about a year ago. Not 2009, but
4 --

5 A Yeah, and I'd have to look back. We've had a few plant
6 managers there.

7 Q Who was the plant foreman at the time about 2013?

8 A Carey Neely. Carey Neely.

9 Q And what was -- what were his duties as plant foreman at
10 the time?

11 A Well they encompassed a lot --

12 MR. NELSON: Calls for speculation.

13 HEARING OFFICER PEREDA: Well what was your interaction
14 with Carey Neely when he was working for the Employer?

15 THE WITNESS: My interaction with Carey?

16 HEARING OFFICER PEREDA: Yeah. To what degree did you --
17 what did you interact with him for?

18 THE WITNESS: We talked about all sorts of things. I
19 mean --

20 HEARING OFFICER PEREDA: Who supervised him?

21 THE WITNESS: It's been different people since I've been
22 here.

23 HEARING OFFICER PEREDA: Have you supervised him at any
24 point?

25 THE WITNESS: As a general manager, yes.

1 HEARING OFFICER PEREDA: What kind of thing would you
2 communicate with him for? Give me examples.

3 THE WITNESS: Talk about production, talk about you know
4 specific pieces of equipment, talk about personnel, any number
5 of things.

6 HEARING OFFICER PEREDA: And how often were your
7 communications with him?

8 THE WITNESS: Weekly. Multi times during the week.

9 HEARING OFFICER PEREDA: Okay. Overruled.

10 Q BY MR. COOK: So what were Mr. Neely's duties back in
11 approximately one year ago?

12 A Running the plant, recommending people to hire, hiring
13 people, firing people, overseeing our MSHA program.

14 Q What is that? When you say MSHA, what does that mean?

15 A MSHA is a federal body, regulatory body called Mine Safety
16 Health Administration and they have oversight of mining
17 operations. Carey would also weld. He would also run the
18 loader. He would, you know, do any number of things.

19 Q So and approximately one year ago, did you have a
20 conversation with him concerning becoming a night shift
21 supervisor?

22 A Yes.

23 Q And what did you explain -- what was explained to him at
24 that time with regards to becoming the night shift supervisor?

25 A I don't know that I was the first one that brought it up

1 to Carey. I was part of that decision making process. But we,
2 you know, had asked Carey to go to night shift because we
3 needed a person with managerial experience and knew the plant
4 and to be the supervisor on the night crew, we needed somebody
5 there that could run the facility at night.

6 MR. NELSON: I'll object as non-responsive. I believe the
7 question was what he told Mr. Neely about being a night shift
8 supervisor and I believe he testified about as to what somebody
9 else might have told him.

10 HEARING OFFICER PEREDA: So what do you -- what was your
11 conversation with him regarding this position? The night
12 supervisory position?

13 THE WITNESS: My conversation was, Carey, that we needed
14 him to go to night shift because we needed a person with his
15 experience, managerial experience, supervisor experience, plant
16 know how, overall capabilities to run the shift while, you
17 know, as the supervisor while nobody else was there at night
18 other than hourly employees.

19 HEARING OFFICER PEREDA: Okay.

20 Q BY MR. COOK: And did he accept the position?

21 A He did.

22 Q And how long did he stay in that position?

23 A Approximately one year.

24 Q And is he no longer working with the company?

25 A He's no longer working with the company.

1 Q So during the period of time that he was the evening shift
2 supervisor, what duties and responsibilities did he undertake?

3 A You know, the same as I mentioned earlier. So he had --
4 our shifts run from 6:00 a.m. to 6:00 p.m. and 6:00 p.m. to
5 6:00 a.m. So Carey and his crew would come on at 6:00 p.m. and
6 run until 6:00 a.m. So you know in the hours of 6:00 p.m. to
7 6:00 a.m., Carey was the guy, the supervisor foreman that ran
8 that crew. So he could have, you know, anywhere from two to
9 four, I don't know if he ever had five people. But somewhere
10 in the neighborhood of two to four additional people at the
11 site and he would run the plant for 12 hours.

12 Q Was the plant manager on site during the evening shift?

13 A He may have been there, you know, in that 6:00 p.m. range.
14 But for the bulk of the shift he was not there.

15 Q And what about you as general manager or Chris as
16 president. Were you present during the evening shift?

17 A Only on rare occasions.

18 Q So in your opinion who was in charge of the operation
19 during the evening shift?

20 A During that time period, Carey Neely.

21 Q Were there -- rephrase that. I'm going to show you some
22 additional documents.

23 HEARING OFFICER PEREDA: Can I please see this chart right
24 here?

25 THE WITNESS: Sure.

1 break right now. But let's take a short break and we can keep
2 it to 45 minutes. So be back by 1:30.

3 MR. COOK: Okay.

4 MR. NELSON: Thanks.

5 HEARING OFFICER PEREDA: Okay.

6 MR. COOK: That's fine.

7 HEARING OFFICER PEREDA: So off the record.

8 (Off the record at 12:43 p.m.)

9 HEARING OFFICER PEREDA: Back on the record.

10 Q BY MR. COOK: Travis, are you familiar with a person by
11 the name of Carey Neely, III?

12 A Yes.

13 Q And who is he?

14 A He's an employee at Mineral Resources.

15 Q And, to your knowledge, how was he hired?

16 A He was recommended and hired by Carey Neely, II.

17 Q And is that the Carey Neely, the evening supervisor we've
18 been talking about up to this point in time?

19 A Yes.

20 Q And what's their relationship?

21 A Father and son.

22 Q And so Carey Neely, Junior, is the father of Carey Neely,
23 III?

24 A Yes.

25 Q Did Cal Neely, III's compensation change while working at

1 Mineral Resources?

2 A Yes.

3 Q And how did that come about, to your knowledge?

4 A Carey -- Carey and JR both had said that Carey, III had
5 been doing a good job and they felt that he deserved an
6 increase in pay.

7 Q And when you say -- who did they make that statement to?

8 A Carey -- Carey and I spoke about -- Carey, Jr., and I
9 spoke about it a handful of times.

10 Q And I'm going to show you a document.

11 I'm sorry. And then tell me what happened, if anything,
12 after these conversations?

13 A So Carey Neely, III was given a increase in pay.

14 Q I'm going to give you a document which has been marked as
15 Exhibit -- Employer's Exhibit 9. I'm going to ask you to just
16 tell us what this is.

17 A Again, it's a payroll adjustment sheet with the
18 employee's name, Carey Neely, III; his hire date of 12/28/2012;
19 his last rate of pay of \$11 per hour; his new rate of pay of
20 \$12 per hour on a bi-weekly basis; job title, plant operator,
21 September 16, 2013; explanation for increase, changed job plant
22 -- changed job, plant operator, days; supervisor, Carey Neely,
23 signed on the 20th of September 2013 and also by -- initialed
24 by Ted Hale on the same date, September 20th, 2013.

25 Q So even some of these payroll actions are already in the

- 1 A That's correct.
- 2 Q Has that position of evening supervisor been filled since
- 3 his termination?
- 4 A Yes.
- 5 Q And who was it filled by?
- 6 A James Doering.
- 7 Q And was Mr. Doering employed by Mineral Resources prior to
- 8 his taking the position of evening supervisor?
- 9 A Yes.
- 10 Q And what was his position prior?
- 11 A He was the lead person on the dayshift.
- 12 Q And how long had -- has Mr. Doering been employed by
- 13 Mineral Resources, to your knowledge?
- 14 A Approximately nine years.
- 15 Q So, to your knowledge, he predated you coming board?
- 16 A He did.
- 17 Q How long -- again, to your knowledge, how long he had been
- 18 -- how long had he been the dayshift lead person foreman?
- 19 A At least since over the past year since Carey -- since we
- 20 started the second shift and Carey went to the night supervisor
- 21 position.
- 22 Q So let's talk about that timeframe approximately the last
- 23 year. Can you give us a description of what the supervisory
- 24 hire date looks like at Mineral Resources taking into
- 25 consideration both the dayshift and nightshift?

1 A As it sits today?

2 Q Well, let's first talk about when you first started the
3 evening shift. What did it look like when you first started
4 the shift?

5 HEARING OFFICER PEREDA: I'm sorry. Can you tell us when
6 you guys added I guess the nightshift?

7 THE WITNESS: It was approximately one year ago.

8 HEARING OFFICER PEREDA: One year ago. Okay.

9 THE WITNESS: Around this time last year.

10 HEARING OFFICER PEREDA: Okay. Thank you. Okay. Go
11 ahead and answer his question.

12 THE WITNESS: So then and now typically the structure
13 would be when there was only one shift you generally would have
14 a plant manager, a supervisor, a plant operator, equipment
15 operators, laborers and utility type of workers with a general
16 manager and a -- you know, the president of the company.

17 It continues to --

18 Q BY MR. COOK: I think maybe I didn't ask a very good
19 question then. I'm really looking at the supervisory hierarchy
20 after you started the second shift. So what did it look like
21 immediately after starting the second shift?

22 A We had a plant manager, a night supervisor and a lead
23 person on the dayshift.

24 Q And who were those people at that time?

25 A When we started that?

1 Q Yes.

2 A Ted Hale was the plant manager. Carey Neely was the
3 nighttime supervisor and James Doering was the lead person on
4 dayshift.

5 Q And so I'm going to move forward in time. And now you
6 have -- you just indicated that the evening supervisor is James
7 Doering. So what is the supervisory hierarchy look like today?

8 A So our plant manager today is Mike Butler. James Doering
9 is the nighttime supervisor and we have not filled the lead
10 person on dayshift position.

11 Q So when Mr. Doering was moved to the evening shift, did
12 his compensation change?

13 A It did.

14 Q In what way did his compensation change?

15 A It increased.

16 Q And do you recall the increase?

17 A Two dollars per hour.

18 Q Does he have any different -- does Mr. Doering have any
19 different duties and responsibilities and authority than Mr.
20 Carey Neely, Jr., had when he occupied that position?

21 A No.

22 Q And how long has Mr. Doering occupied that position?

23 A Approximately two weeks.

24 Q And, to your knowledge, has he had any opportunity to get
25 involved in any hiring or firing during that two-week period of

1 time?

2 A No hiring. There was a potential firing that James, JR,
3 and I discussed the other evening, but we didn't -- we didn't
4 terminate an employee. We just had a conversation about it.

5 Q I'm sorry. You used the term "JR." Who's that?

6 A James Doering.

7 Q Okay. So tell us about that incident.

8 A We had an employee that had failed to call in first shift
9 or show up for a shift and felt that it was just cause for
10 termination, and -- so I actually went up and discussed that
11 with James Doering along with Mike Butler and had determined
12 that we were going to terminate that person if he showed up for
13 the shift that evening. When he did show up for the shift,
14 Mike Butler, James and myself all listened to why -- why he
15 wasn't able to call in, and it was determined at that time to
16 keep him on, and so that employee is still employed.

17 Q And did -- what was Mr. Doering's involvement in that
18 decision making process?

19 A It was just -- it was really just sitting around and
20 discussing why -- why that employee didn't call or show up for
21 his shift. And I guess James' involvement was that he said,
22 you know, "You can get ahold of somebody. Try to get ahold of
23 whoever you can to let them know if you're not going to show up
24 for work."

25 Q And did he make any recommendation with regards to this

1 A The supervisor certainly would have ordered equipment in
2 the past, based on like a verbal purchase order, for example.

3 Q And to your knowledge has Carey Neely approved the
4 purchase of either -- well, purchase of equipment or material
5 -- not material, but equipment?

6 A Yes.

7 Q And to your knowledge, does James Doering have the same
8 authority?

9 A Yes.

10 Q Has he exercised that authority over the last two weeks,
11 to your knowledge?

12 A Not to my knowledge.

13 MR. COOK: Those are all of the questions I have.

14 HEARING OFFICER PEREDA: Redirect (sic)?

15 MR. NELSON: I have some more.

16 **RECROSS-EXAMINATION**

17 Q BY MR. NELSON: You were talking about Mr. Neely ordering
18 equipment. Can you give any specific instance in which he did
19 that?

20 A More parts and pieces, things of that nature.

21 Q Okay. Can you give -- when was the last time he did it?

22 A Here's Exhibit 5, fuel that he has the right to go
23 purchase.

24 Q Okay. Other than exhibit -- the items listed in Exhibit
25 5, can you think of any instance, specific instance, in which

1 Mr. Neely ordered equipment?

2 A Specifically, no. But I have firsthand knowledge that
3 he's done it several times through local vendors buying parts,
4 pieces, supplies, things like that.

5 Q Okay, and would he need to check with anybody prior to
6 doing that?

7 A No.

8 Q Okay. Getting back to the assignment of work, we've
9 talked about what goes on out there. And is it basically true
10 that the work that happens that we've discussed, pushing the
11 sand off the hill, loading it with the loader onto the conveyer
12 into the machine into these stockpiles, that's the work that
13 goes on every day?

14 A Yes.

15 Q And right now that same work is going on seven days a
16 week?

17 A Yes.

18 Q And it's been going on in the same fashion for some years?

19 A Not seven days a week, but -- excuse me, not 24 hours a
20 day seven days a week, but the same fashion for the most part,
21 yes.

22 Q Right. And, in fact, when something arises isn't there --
23 at shift change there is a communication from one shift to the
24 next shift about any issues that arose during the one shift or
25 that needs to be done on the next shift?

1 out because the material has a little more clay in it, the
2 clarifier may plug, as an example. Just overall communication
3 of the operation.

4 Q Okay. And that gets done -- transmitted from each shift,
5 and then in the morning Mr. Doering would do the same to the
6 next person?

7 A Correct.

8 Q Okay. You also testified that typically what determines
9 what an employee would do all day, if you're typically loader
10 one day you would typically run it the next?

11 A That's correct.

12 Q And is that pretty much the same for the other job
13 classifications?

14 A That's correct.

15 MR. NELSON: Okay. I don't have anything further.

16 HEARING OFFICER PEREDA: Any further questions?

17 MR. COOK: No.

18 HEARING OFFICER PEREDA: Okay. Thank you so much for
19 testifying and you are done for today.

20 THE WITNESS: Thank you.

21 HEARING OFFICER PEREDA: So there is no room available on
22 Tuesday. Are you guys available on Wednesday?

23 MR. NELSON: Judge, I'm sure I can be made --

24 HEARING OFFICER PEREDA: The other thing we can do is we
25 can -- I don't know, if we do come back on Monday, we can start

- 1 A Yes, yes.
- 2 Q Okay. And that's done with the plant manager?
- 3 A Whoever is the supervisor. It could be the plant manager
- 4 leaving one shift and going into the second shift. He would
- 5 communicate with the supervisor of the second shift. That's
- 6 correct.
- 7 Q So the plant manager, for example, right now would
- 8 communicate with Mr. Doering as to -- as to what sort of
- 9 things?
- 10 A How the day went, how things are running, yeah.
- 11 Q How much to run, production?
- 12 A No, that's never a question. We try to run as much as we
- 13 can.
- 14 Q Okay. All right. Fair enough. Talking about
- 15 equipment breakdowns or --
- 16 A Sure.
- 17 Q -- equipment that appears to be or may need to be
- 18 addressed?
- 19 A Yes, they do have those conversations.
- 20 Q What other types of information gets conveyed from one
- 21 shift to the next?
- 22 A Those are the types of things. If there's mechanical
- 23 things to discuss, it would be discussed. And then there again
- 24 if there was a breakdown of some kind, just how the day went,
- 25 you know, maybe how the material has been running, maybe watch

- 1 Q And are you currently employed?
- 2 A Yes.
- 3 Q And where are you currently employed?
- 4 A Sierra Silica Resources.
- 5 Q What's your position currently?
- 6 A Operations manager.
- 7 Q And were you previously a plant manager for Mineral
- 8 Resources?
- 9 A Yes.
- 10 Q When were you plant manager?
- 11 A The end of 2011 -- well, anyway, about for the last year
- 12 or so up until September of last year or something.
- 13 Q So 20 --
- 14 A 2013.
- 15 Q 2013?
- 16 A Ish, yeah, a little, 2012.
- 17 Q And during that period of time that you were a plant
- 18 manager did the company start running two shifts?
- 19 A Yes.
- 20 Q And who was the evening shift supervisor at the time that
- 21 you were plant manager?
- 22 A It switched. Carey was evening manager at times. James
- 23 Doering also was at times.
- 24 Q When you say Carey, you're talking about Carey Neely, Jr.?
- 25 A Okay. Yeah, Junior, yes.

- 1 Q And James is James Doering?
- 2 A James Doering.
- 3 Q So at the time that Mr. Carey Neely, Jr., was evening
- 4 supervisor were you aware of him hiring any employees?
- 5 A During the time that I was manager he hired and fired
- 6 several employees.
- 7 Q Do you know the name Douglas Dunston?
- 8 A Yes.
- 9 Q And was he involved in the hiring of Douglas Dunston?
- 10 A Yes.
- 11 Q And how do you know that?
- 12 A Because he came to me and --
- 13 Q He meaning Carey?
- 14 A Yes, Carey. Carey, Jr., came to me and told me that he
- 15 was going to hire Douglas as a loader operator and that he was
- 16 familiar with him, had worked with him previously, and wanted
- 17 to bring him on.
- 18 Q And what did you say when he told you that?
- 19 A I said sure, that's fine.
- 20 Q And did you interview Mr. Dunston?
- 21 A I did not.
- 22 Q And did you rely upon the recommendation of Mr. Neely?
- 23 A Yes, I did.
- 24 Q Are you familiar with Joseph Richardson?
- 25 A I am.

1 send out a group text on the start of production numbers and
2 pictures of anything that occurred that went wrong.

3 Q I see. And why was he sending pictures of anything that
4 occurred or went wrong?

5 A That way we had knowledge of it.

6 Q Okay. Was that he was instructed to do that?

7 A Yes.

8 Q Okay. And the same thing with the telephone
9 communications, he was instructed to get in touch with you
10 about issues that arose during the nightshift?

11 A Uh-huh.

12 Q Is that a yes?

13 A Yes.

14 Q Okay. Are you familiar with an employee by the name of I
15 believe Rodney Renfro?

16 A Yes.

17 Q And did you terminate that employee?

18 A Yes.

19 Q Okay. Let's see, what were Mr. Doering's duties as the
20 lead man when you -- when you supervised him?

21 A To prepare the plant if anything broke and to delegate and
22 to make sure we had good production.

23 Q Okay. Anything else?

24 A No.

25 MR. NELSON: I don't have anything else. Thank you, sir.

1 HEARING OFFICER PEREDA: I have a few questions for you.

2 When you started working for Mineral Resources who did you
3 report to?

4 THE WITNESS: Ted Hale.

5 HEARING OFFICER PEREDA: And when you say Carey was my
6 supervisor you're not saying that you reported to him, you're
7 saying that he was one of your -- one of the employee
8 supervisors, I guess one of the supervisors under you; is that
9 what --

10 THE WITNESS: Yes.

11 HEARING OFFICER PEREDA: -- you're saying?

12 THE WITNESS: Yes.

13 HEARING OFFICER PEREDA: Okay. So, you testified to the
14 duties of Mr. Neely and Mr. Doering. What is the difference
15 between being the supervisor as was Mr. Neely and the lead man
16 for the daytime?

17 THE WITNESS: Carey had the power to fire and James
18 didn't.

19 HEARING OFFICER PEREDA: And what were your hours?

20 THE WITNESS: They varied. Mostly worked 7:30, 7:00 to
21 4:00, 4:30 or later.

22 HEARING OFFICER PEREDA: 7:00 in the morning --

23 THE WITNESS: Yes, ma'am.

24 HEARING OFFICER PEREDA: -- until 4:00? And then
25 afterwards you were available via phone?

1 HEARING OFFICER PEREDA: You are done for today.

2 Okay. Before the Union starts on -- on its next witness --
3 or starts with its first witness, let's go off the record for
4 about two minutes.

5 MR. NELSON: Okay.

6 (Off the record at 11:44 a.m.)

7 HEARING OFFICER PEREDA: Back on the record.

8 Okay. Will the Union -- the Union please go ahead and call
9 its first witness.

10 MR. NELSON: Mr. Doering.

11 HEARING OFFICER PEREDA: Mr. Doering, go ahead and raise
12 your right hand.

13 Whereupon,

14 JAMES R. DOERING

15 having been duly sworn, was called as a witness herein and was
16 examined and testified as follows:

17 HEARING OFFICER PEREDA: Okay. Go ahead and take a seat.

18 **DIRECT EXAMINATION**

19 Q BY MR. NELSON: There's already been a lot of testimony
20 about you, Mr. Doering, so I'm go cut right to the chase.

21 What's your current position?

22 HEARING OFFICER PEREDA: Can you tell him to state his
23 name, just for the record?

24 MR. NELSON: I'm sorry.

25 HEARING OFFICER PEREDA: Thank you.

- 1 MR. NELSON: Sure.
- 2 Q BY MR. NELSON: Could you state your name and spell your
- 3 last name for the record, please?
- 4 A James Ryan Doering, D-O-E-R-I-N-G.
- 5 Q Okay. How long have you been working on the night shift
- 6 at Mineral Resources?
- 7 A About eight days.
- 8 Q Eight days. Okay.
- 9 A Since 4/10.
- 10 Q Pardon me?
- 11 A Since 4/10.
- 12 Q April 10th?
- 13 A Yes.
- 14 Q Okay. And since that time, have you hired anybody?
- 15 A No.
- 16 Q Have you -- were you told you had to -- well, let me ask
- 17 you -- let me step back a second and say, when you shift --
- 18 when you switched from the day shift to the night shift, was
- 19 there any discussion with anyone from management as to what
- 20 you're duties would be?
- 21 A Yes.
- 22 Q And what were you told your duties would be?
- 23 A I -- I specifically asked Keith to -- what my new duties
- 24 would be as the night shift supervisors and he said, "Nothing.
- 25 Nothing has changed."

- 1 Q He said -- pardon me?
- 2 A He said nothing would have changed.
- 3 Q Okay. So did he indicate to you in any way that you had
- 4 any additional duties or responsibilities than you had as a
- 5 leadman during the day shift?
- 6 A No.
- 7 Q Okay. And who's Mr. Tubandt?
- 8 A He was one of the bosses.
- 9 Q Okay. And, let's say, during the last year, who were your
- 10 supervisors?
- 11 A Ted, Travis, Chris, Ray, Keith and now Mike.
- 12 Q Mike Butler?
- 13 A Yes.
- 14 Q And --
- 15 HEARING OFFICER PEREDA: I'm sorry. Is Keith's last name
- 16 Tubandt? Is that --
- 17 MR. NELSON: Tubandt.
- 18 HEARING OFFICER PEREDA: Okay. Continue.
- 19 MR. NELSON: Okay.
- 20 Q BY MR. NELSON: Now, since you've been on the -- the night
- 21 shift, I asked you, have you hired anybody?
- 22 A No.
- 23 Q Were you told you had the authority to hire anyone?
- 24 A No.
- 25 Q Have you been -- have you been asked for your

- 1 recommendation about hiring anyone?
- 2 A No.
- 3 Q Since you've been on the night shift, have you transferred
- 4 any employees from one shift to the next?
- 5 A No.
- 6 Q Have you recommended that any employee be transferred from
- 7 one shift to another?
- 8 A Yes. I did recommend it and they told me no.
- 9 Q And when was that?
- 10 A Approximately three days ago --
- 11 Q Okay.
- 12 A -- maybe four days ago. Uh-huh.
- 13 Q And what -- what employee did you want to transfer?
- 14 A Carey Neely, III.
- 15 Q Okay. And from --
- 16 A I --
- 17 Q -- what shift?
- 18 A From day shift to night shift.
- 19 Q Okay. And --
- 20 A To help the night shift out.
- 21 Q And to whom did you make that request?
- 22 A Mike.
- 23 Q Mike Butler?
- 24 A Yes.
- 25 Q And what was Mr. Butler's response?

1 A "No."

2 Q Okay. During the time you've been working nights, have
3 you laid any employees off?

4 A No.

5 Q Have you been informed that you had the authority to lay
6 any employees off?

7 A No.

8 Q Okay. Has anybody asked you for any recommendation about
9 laying any employees off?

10 A No.

11 Q Since you've been working the night shift, have you
12 promoted any employees?

13 A No.

14 Q Have you been informed that you have the authority to
15 promote an employee from one position to another?

16 A No.

17 Q Have you been asked for your recommendation with respect
18 to promoting an employee from one position to another?

19 A No.

20 Q And what about rewarding employees, have you -- since
21 you've worked the night shift, have you given employees raises?

22 A No.

23 Q Do you have that authority?

24 A No.

25 Q Were you ever told you had that authority?

- 1 A No.
- 2 Q Have you, since you've been working nights, been asked
3 your recommendation as to whether or not employees should
4 receive a raise?
- 5 A No.
- 6 Q Do you have the authority on the night shift to grant days
7 off?
- 8 A No.
- 9 Q Do you have the authority to -- to change the time
10 employees report to work?
- 11 A No.
- 12 Q Do you have the authority to grant employees overtime?
- 13 A No.
- 14 Q Since you've been on the night shift, have you been told
15 that's it's your responsibility to resolve disputes between
16 employees?
- 17 A No.
- 18 Q If -- well, let me -- from the start of the -- or at the
19 end of day shift to the start of the night shift, is there a
20 meeting from -- with one shift to the next?
- 21 A Yes.
- 22 Q Okay. And who participates in -- in that meeting?
- 23 A The day shift employees and the night shift employees.
- 24 Q All of them?
- 25 A Yes.

- 1 Q Okay. And what is discussed in that meeting?
- 2 A If there's problems going on in the plant, the day shift
- 3 tells the night shift what's going on, what the problems have
- 4 been. If -- like in Mike wants something done, he relays the
- 5 information to the night shift to get it done.
- 6 Q Okay.
- 7 A That's --
- 8 Q Anything else that --
- 9 A No.
- 10 Q -- that you can think of as you sit here?
- 11 A No.
- 12 Q Okay. What about production, is there any discussion
- 13 about how much sand to produce?
- 14 A Make sand.
- 15 Q Okay. And make as much as you can?
- 16 A Yes.
- 17 Q Okay. Is that the -- is that the goal every night?
- 18 A Yes.
- 19 Q Is that the order every night?
- 20 A Yeah. Same routine every night and every day.
- 21 Q Okay. Has your job changed at all since you've been from
- 22 daytime leadman to nighttime shift supervisor?
- 23 A No.
- 24 Q Now, there was this one incident that was testified to
- 25 last Friday about a -- the almost discipline of an employee.

- 1 And do you recall that incident? I'm not talking about the
2 testimony, but the incident that -- that recently occurred?
- 3 A Yes.
- 4 Q Okay. And can you tell us what happened?
- 5 A I was up at the office before my shift was starting that
6 -- that evening, Travis pulled in and he called me into the
7 office and said, "Well, I've" -- "I plan on terminating Joseph
8 Richardson." Had -- he showed me a piece of paper. It had his
9 name and my name on it.
- 10 Q This piece paper was a termination slip?
- 11 A I assume, yeah.
- 12 Q Okay.
- 13 A Yeah.
- 14 Q And it was already filled out with you saw it?
- 15 A It wasn't -- I don't think it was filled out. I know I
16 didn't sign it.
- 17 Q Okay.
- 18 A I don't think he signed it.
- 19 Q But it had your name on it and his name?
- 20 A Print -- typed, yes.
- 21 Q Oh, typed. I see.
- 22 A Yes, yes.
- 23 Q And -- and did you prepare that form?
- 24 A No.
- 25 Q Okay. Is it your understanding that Travis did?

- 1 Q -- you don't assign them?
- 2 A It's a process of running the plant. Everybody knows what
- 3 the process is. And whatever needs to be done, we do it.
- 4 Q Okay. And does that process change from one shift to the
- 5 next?
- 6 A Slightly.
- 7 Q Okay. And does it change in any major way?
- 8 A No.
- 9 Q Has your job been the same since you've been -- or let me
- 10 ask you this, has Mineral Resources been operating at that
- 11 facility the same since you've been working there?
- 12 A Yes.
- 13 Q Okay. Let's talk about your time during the day when you
- 14 were the daytime leadman. For how long were you a daytime
- 15 leadman?
- 16 A For a while.
- 17 Q Okay. But could you estimate --
- 18 A Between -- at least a year --
- 19 Q Okay.
- 20 A -- I would say.
- 21 Q And during that time period, was there always a supervisor
- 22 on the shift?
- 23 A Maybe not on the shift, but there was always a supervisor,
- 24 yes.
- 25 Q Okay. And who were your supervisors? Oh, I think you

1 answered that question earlier.

2 A Yeah.

3 Q Sorry. I just don't mean to -- I don't mean to ask you it
4 again. And when you were a daytime leadman, were you
5 responsible for hiring?

6 A No.

7 Q Did you have any responsibilities with respect to
8 transferring employees from one shift to the next?

9 A No.

10 Q Were you involved in any way in the discipline, discharge,
11 or suspension of employees?

12 A No.

13 Q Did you participate or have any authority with respect to
14 laying employees off?

15 A No.

16 Q Or recalling employees from layoff?

17 A No.

18 Q Did you have the authority to promote employees?

19 A No.

20 Q Did you assign employees tasks while you were a dayshift
21 leadman?

22 A If Mike told me these things need to be done during the
23 day, I would then relay it to the guys what we needed to do.

24 Q Okay. And Mike is Mike Butler?

25 A Yes.

- 1 Q Okay.
- 2 A Or Keith or Ted or whoever was giving the orders. Yeah.
- 3 Q Okay.
- 4 A It was -- it --
- 5 Q So you were a conduit from management to the rest of the
- 6 workers?
- 7 A Pretty much.
- 8 Q Okay. And did you have the authority to reward employees
- 9 when you were a dayshift leadman?
- 10 A No.
- 11 Q Give them bonuses?
- 12 A No.
- 13 Q Paid days off?
- 14 A No.
- 15 Q Did you have the authority to change employees' start or
- 16 end times throughout the day?
- 17 A No.
- 18 Q What about to grant time off?
- 19 A No.
- 20 Q What about to have somebody work overtime?
- 21 A No.
- 22 Q During the time you were a dayshift leadman, were you
- 23 responsible in any way for resolving differences between
- 24 employees?
- 25 A No.

1 Q There was discussion and testimony about you receiving a
2 raise for going from the dayshift to the nightshift.

3 MR. NELSON: Let me just have this -- I will mark this as
4 Union Exhibit 2.

5 **(Union Exhibit Number 2 Marked for Identification)**

6 (Counsel confer)

7 Q BY MR. NELSON: I placed before you, sir, a one-page
8 document marked Union Exhibit 2. It says, "Mineral Resources,
9 LLC, payroll adjustments sheet"; do you see that?

10 A Yes.

11 Q All right. And do you -- does this document bear your
12 signature?

13 A Yes.

14 Q And where is that at?

15 A At the top.

16 Q Right under your printed name?

17 A Yes.

18 Q Okay. And on the bottom of the document it says
19 supervisor. Do you recognize that person's signature?

20 A Yes.

21 Q And who is that?

22 A That would be Keith.

23 Q Keith?

24 A Tubandt.

25 Q Tubandt. Okay. And under that it says manager. And do

1 Q So when you got the \$2 raise you just referred to, did you
2 -- were you then -- did you get that and then become classified
3 as the lead person on the dayshift?

4 A No.

5 Q Were you ever -- in your mind, were you ever the lead
6 person on the dayshift?

7 A Yes.

8 Q And what period of time did that cover?

9 A Probably when Carey went to the nightshift, I would say.

10 Q And so --

11 A Nobody ever told me I was -- that was my classification.
12 They just -- that's just kind of the position that I fell into.

13 Q But you understood yourself to be the lead person then
14 when Carey Neely went to the nights?

15 A Yes.

16 Q So what are the responsibilities of the lead person that
17 are different than the responsibilities of the other people on
18 the crew?

19 A No different.

20 Q So there's no difference whatsoever?

21 A No.

22 Q And is there any difference between being the evening
23 supervisor and anybody else on the evening crew?

24 A The title.

25 Q Sorry?

- 1 A The title.
- 2 Q Other than title, is there anything different that you do
- 3 than anybody else on the evening crew does?
- 4 A No.
- 5 Q With respect to the overburden, are you familiar with the
- 6 name of a company called Santillian?
- 7 A Yes.
- 8 Q And what -- have they worked for Mineral Resources at the
- 9 mine, to your knowledge?
- 10 A What?
- 11 Q Have they worked at the mine?
- 12 A Yes.
- 13 Q And what have they done?
- 14 A They've done a lot of work up there.
- 15 Q Okay. Well --
- 16 A From --
- 17 Q -- so what have they done?
- 18 A From removing overburden to cleaning ponds to running
- 19 equipment to watering the road to grading the road, various
- 20 types of work --
- 21 Q And --
- 22 A -- at the mine.
- 23 Q -- did they remove overburden in 2013?
- 24 A Yes.
- 25 Q And for how long did they do that?

1 may be part of somebody's duties even if they are only
2 occasionally performing this. I understand that maybe the
3 employees at Mineral Resources are not doing the major removal
4 because that is subcontracted. But if it's needed, maybe
5 they're occasionally doing it. And if it's something that they
6 occasionally do, I mean, you know, it's part of the job.

7 So, I mean, I want you guys to think about that because I
8 don't think it's an issue out there. So I think we should
9 really focus on what the true issue is here, whether the
10 leadman and the nightshift supervisors are in fact 211
11 supervisors. So if you guys could talk to your clients about
12 that. I would like to straighten it out because I don't want
13 the decision writer to be confused about this whole thing about
14 the overburden. Because I don't think there's -- I mean, based
15 on what I've heard from the Employer's witnesses and the
16 Union's witnesses thus far. So please think about it during
17 lunch. So please be back at 1:10. Off the record.

18 (Off the record at 12:39 p.m.)

19 HEARING OFFICER PEREDA: Let's go on the record. Okay.
20 Will the Union please go ahead and call its next witness.

21 MR. NELSON: Sure. Would you like to -- you asked before
22 we went off the record for the parties to consider their
23 position on an overburden and whether or not it's an
24 appropriate issue of this hearing. Excuse me. It's the
25 Union's position that it's not -- not an issue affecting the

1 composition of the unit, which is the subject of the hearing.

2 HEARING OFFICER PEREDA: Okay. When -- when you amended
3 the petition, you amended it in a way to include these
4 individuals into the petition or -- or -- and I can actually --

5 MR. NELSON: You're right. I -- I did include the --
6 you're right, I did do that. I included the -- amended it to
7 include on site mining operations, including on site hauling
8 and removal overburden."

9 HEARING OFFICER PEREDA: Okay.

10 MR. NELSON: And so I guess we can -- we can delete -- we
11 would amend it again to delete that, but we would not put it in
12 the excluded. Again, because it's a function rather than a
13 position.

14 HEARING OFFICER PEREDA: Right. Mr. Cook, do you have any
15 position? Do you want to take a position on that? Do you want
16 to comment?

17 MR. COOK: Yeah. I -- I would just mention that the way we
18 look at it is that the work of the plant is separate and
19 distinct from the work in the -- on the mine. So it's -- I
20 believe that the correct and appropriate bargaining unit are
21 the employees that are employed at the wet plant and it include
22 the employees at the mine. So basically we're talking about
23 overburden. That's how we defined it.

24 And so, in your opinion, the bargaining unit should exclude
25 the mining operation. And we've defined the mining operation

DIRECT EXAMINATION

- 1
- 2 Q BY MR. NELSON: Sir, please state and spell your last name
- 3 for the record.
- 4 A Carey Drew Neely, Jr. My last name is N-E-E-L-Y.
- 5 Q All right. Mr. Neely, approximately when did you start
- 6 working for Mineral Resources?
- 7 A About June 2008.
- 8 Q And when was your last day of work for the company?
- 9 A I believe it was March 1st or 2nd.
- 10 Q Are you sure of that date, sir?
- 11 A The last date worked?
- 12 Q Yeah.
- 13 A Or when I got called in and got relieved -- let go?
- 14 Q When you got -- when you got let go.
- 15 A I believe it was the first or the -- I believe it was the
- 16 1st or the 2nd.
- 17 Q Of which month?
- 18 A Of April.
- 19 Q Okay. All right. And what was the last position you held
- 20 at Mineral Resources?
- 21 A Night time leadman.
- 22 Q And how long did you hold that position?
- 23 A Maybe six or seven months.
- 24 Q And prior to that, what position did you hold?
- 25 A Daytime leadman.

- 1 Q And approximately how long did you hold that position?
- 2 A I believe a year.
- 3 Q And before that, what position did you hold?
- 4 A Foreman.
- 5 Q And when -- when did you stop being a foreman and starting
- 6 being a daytime leadman?
- 7 A Actually, it was on my birthday. 9/27/2013. I was told
- 8 my Ted Hale and Travis that I was no longer in that position.
- 9 They were hiring Ray Briseno. Sorry. I can't say his last
- 10 name.
- 11 Q Okay. So 9/27 -- did you say '13, 2013?
- 12 A Yeah. 2000 -- 9/27/2013.
- 13 Q Okay. And -- so you were told then that you were no
- 14 longer a foreman?
- 15 A Yeah. Ted Hale --
- 16 Q Okay. I'm -- I'm trying to figure something out. You
- 17 testified that you were the -- so if you stopped being the --
- 18 the foreman on September 27th, 2013, you then became the
- 19 daytime leadman --
- 20 A Yes, sir.
- 21 Q -- correct? And then after that, you became the nighttime
- 22 leadman?
- 23 A Yes, sir.
- 24 Q All right. And you were terminated on -- on 4 -- August
- 25 -- excuse me -- April 2nd, 2014?

1 A Yes, sir.

2 Q Or approximately then. Okay. So -- so on September 27,
3 2013, you became the daytime leadman. And for how many -- how
4 long did you hold that position before you went to the night
5 shift?

6 A Maybe a couple of months.

7 Q Okay. Okay. And did Travis and Mr. Hale tell you what
8 your duties would be with they removed you as foreman and made
9 you daytime leadman?

10 A Yeah. Ted -- Ted Hale said I was nothing but a leadman
11 during the day.

12 Q Okay. And was there further discussion as to what that
13 meant?

14 A No.

15 Q Okay. From -- prior to being a leadman, when you were a
16 foreman, did you have the authority to hire?

17 A Yes, sir.

18 Q And how long were you a foreman?

19 A Maybe four or five months.

20 Q Okay. And during that four or five months, did you hire
21 people?

22 A Yes, sir.

23 Q All right. And after you were no longer a foreman, once
24 you were no longer a foreman and you were a daytime lead
25 person, did you have the authority to hire people?

- 1 A No.
- 2 Q Did anybody tell you that you had the authority to hire
3 people?
- 4 A No.
- 5 Q Did anybody seem your recommendation as to whether or not
6 people should be hired?
- 7 A No.
- 8 Q What about transfer, during the time you were the daytime
9 leadman or the -- the nighttime leadman, did you have the
10 authority to transfer employees?
- 11 A No, sir.
- 12 Q Did anybody ask for your recommendation about transferring
13 employees from one shift to the next?
- 14 A No, sir.
- 15 Q And after you were a foreman, so we're talking about the
16 time when you were a daytime or a nighttime lead person, did
17 you have the authority to discipline, discharge or suspend?
- 18 A No.
- 19 Q Okay. Did anybody tell you you did?
- 20 A No.
- 21 Q Did anybody seek your recommendation on disciplinary
22 matters during the time you were a daytime or nighttime lead
23 person?
- 24 A No.
- 25 Q Did you, during this same period of time where you were a

1 daytime or nighttime lead person, have the authority to lay
2 anyone off?

3 A No.

4 Q Did you lay anybody off?

5 A No.

6 Q Okay. Did anybody ask for your recommendation as to
7 whether or not someone should be laid off?

8 A No.

9 Q Did anybody tell you you had the authority during this
10 same period of time to re-call employees who were on layoff?

11 A No.

12 Q During this same period time, did you have the authority
13 to promote employees from one position to another?

14 A No.

15 Q And were you asked during this time period for your
16 recommendation about whether or not an employee should be
17 promoted from one position to another?

18 A No.

19 Q During this time period, did you have the authority to
20 reward employees by giving them increased wages or time off or
21 anything like that?

22 A No.

23 Q Were you asked for your opinion as to how much, for
24 example, bonus other employees should get?

25 A No.

1 Q Were you ever told during this time period when your
2 daytime or nighttime leadman that you would be disciplined or
3 you would be held responsible if another employee did not
4 perform his work properly?

5 A No.

6 Q And during the time you were a daytime or nighttime lead
7 person, was it your responsibility to resolve differences
8 between employees?

9 A No.

10 Q Is that something you ever did?

11 A No.

12 Q During your time as a daytime or a nighttime lead person,
13 who set production, the amount of sand to produce?

14 A The management.

15 Q Okay. And -- and when you say the management, during the
16 time you were a daytime or nighttime lead person, who was the
17 management?

18 A That was Ted Hale, Travis, well, Chris and Ray.

19 Q And --

20 A And then Keith came later.

21 Q Keith Tubandt --

22 A Yeah.

23 Q -- came later?

24 A Yeah.

25 Q Okay. Now, during the time you were a daytime lead

1 person, did you have discussions with the night shift at -- at
2 shift change?

3 A Not really. Just -- just to say what was going on with
4 the plant.

5 Q Right. That's -- that's what I just wanted to know. So --

6 A Yeah.

7 Q -- there -- did that happen every day?

8 A Yeah.

9 Q Okay. There was some discussion as to -- from one shift
10 to the next as to what operations were -- were going fine and
11 which ones were not going fine?

12 A Yes, sir.

13 Q Okay. Perhaps discussions regarding equipment that was
14 broken or may need to be -- have attention?

15 A Yes, sir.

16 Q Okay. And during the time you were a daytime lead person,
17 did you assign employees, for example, "Joe Smith, you operate
18 the loader?"

19 A No.

20 Q Okay. Who made those assignments, if anyone?

21 A They were already designated. As -- as the guys came in,
22 you know, they got hired for the positions. Like the loader
23 operator was separate and then everybody in the plant did
24 everything.

25 Q Okay. So, if I understand correctly, a loader operator is

- 1 a little separate because he's out dealing with the sand?
- 2 A Yes, sir. He's in the pit.
- 3 Q He's in the pit?
- 4 A Yeah.
- 5 Q Okay. And the rest of the people are focused on the
- 6 operation of the plant?
- 7 A Yes, sir.
- 8 Q And do they work interchangeably if they're qualified?
- 9 A Oh, yeah.
- 10 Q Pardon?
- 11 A Yes, sir.
- 12 Q Okay. And now talking about the -- the people who aren't
- 13 loader operators, who decides, for example, when you were a
- 14 daytime leadman, when employee operated the plant versus worked
- 15 in the machine shop?
- 16 A It was whoever needed to be -- whatever position needed to
- 17 be filled at that position. Everybody knew what to do. It was
- 18 just if the plant operator was loading a truck and, you know, I
- 19 would fill in for the plant operator. Or if the loader -- or
- 20 the groundsman was loading a truck, then I was out back
- 21 digging, or vice versa. Everybody just knew what to do.
- 22 Q Okay. And during the time you were a daytime leadman, did
- 23 you have the authority to tell, for example, somebody else to
- 24 operate the -- to tell the person on the loader to get off of
- 25 it and have somebody else run it?

1 A No. I had to speak to the manager above me.

2 Q Okay. And what about when you were -- well, let me ask
3 you. When you were a daytime leadman, was there a manager on
4 -- present?

5 A That would be Ted Hale or Ray, and then it got to be Keith
6 and then Mike came later.

7 Q All right. And they were -- they also worked the day
8 shift?

9 A Yes, sir.

10 Q And were there ever times when you communicated with them
11 by telephone during the day shift or was it always face-to-
12 face?

13 A No. It was telephone.

14 Q By telephone?

15 A Yes, sir.

16 Q Okay. And during the time you were a daytime leadman, how
17 frequently would you make these telephone calls to one of your
18 superiors?

19 A Two to ten times a -- two to ten times a day at least.

20 Q Okay. And about what types of matter would you call?

21 A Anything. If something broke down, we had to call them
22 and tell them. If the plant was going to be down for more than
23 an hour, we were -- is I was told to tell them and then that
24 way and get -- if something was broken, then I had to get the
25 okay to fix it or what to do.

1 Q Okay. So you would call them if there was production or
2 equipment issues?

3 A Yes, sir.

4 Q What about if there were issues between employees, a
5 dispute between employees, would you contact them in that
6 context?

7 A Yeah. We kind of all just worked together. There wasn't
8 really no discrepancies. No one really -- everybody knew what
9 was going on. There was no --

10 Q There wasn't --

11 A -- arguing.

12 Q -- a lot of disputes?

13 A Yeah.

14 Q Okay. Well, that's good. What about if an employee
15 didn't show up for work?

16 A They would call anybody. They would call the plant phone
17 or call anybody, you know, or whoever's coming in that shift,
18 they'd call JR or -- or another employee and then they would
19 relay it down and then we would tell management.

20 Q Okay. And -- all right. During time you were a nighttime
21 lead person, how was work assigned?

22 A I'd come in from the -- I would come in and then the next
23 would tell me either to call Ted or call Ray and get my -- get
24 what I have to do for the night.

25 Q Okay. And then what would you do with that information?

1 A I would do what I was told.

2 Q Okay. And -- and would you then transmit of information
3 to the rest of the crew?

4 A No. Everybody -- either -- most of the time the plant
5 would be running, so everybody would go in their positions.
6 You know, I mean positions. Everybody would be what they were
7 supposed to be doing. So we would -- we'd all just fall in,
8 like -- like a routine.

9 Q Okay. Now, during the time you were a nighttime or
10 daytime lead pen, did you ever make any recommendations on
11 employee discipline?

12 A Onetime during the day.

13 Q Okay. Approximately when was that?

14 A It was about -- it was a couple months after Ray had been
15 hired. Maybe a month after Ray had been hired.

16 Q Okay.

17 A And then -- or maybe two months. I'm not too sure. But
18 it was the -- the employees had a conflict with the new
19 manager, Mike Butler, and they all came to me about it. And
20 then Ray -- they were coming to Ray. So I -- I asked Ray and
21 Mike to come aside and try to talk to them. Well, Mike asked
22 me to take it to the street. He wanted to fight. And then I
23 asked Ray, I said -- I said, "Hey, well, you know, I mean
24 this" -- "this is" -- "you should fire him. You should fire
25 him." Ray says -- or I said, "you should fire him." And Ray

1 says, "No. You're not the boss no more." So, as that went,
2 Mike's still there.

3 Q All right. Other than that instance, did you recommend
4 discipline for any employee?

5 A No, sir.

6 Q Now, when you were the nighttime lead person, did you feel
7 you were free to take action as you liked with respect to the
8 running of the operation?

9 A No.

10 Q Okay. And was that -- were your limits on your the extent
11 of discretion made clear to you?

12 A Oh, yes, sir.

13 Q Okay. And frequently?

14 A Yes, sir.

15 Q Okay. And by whom?

16 A By Ted Hale.

17 Q All right. And tell us what Mr. Hale told you about the
18 scope of your authority.

19 A Ted Hale -- I had -- I had -- we were trying to make sand
20 but they were -- they were changing different parts of the
21 plant. So I recommended a different change, and Ted Hale told
22 me to not make any changes. If I was to make any changes, I'd
23 be let go because that's a different direction than I was
24 trying to go.

25 Q Okay. And approximately when was that?

1 A That was probably a couple of months ago.

2 Q Okay. During the time you were a daytime or a nighttime
3 lead person, did you have the authority to stop or start the
4 plant whenever you wanted?

5 A No.

6 Q When you were a nighttime lead person, did you also
7 communicate with your supervisors by telephone?

8 A Yes, sir.

9 Q And approximately how frequently?

10 A Two to ten times a night.

11 Q And what sort of matters? The same sort that you
12 testified to earlier?

13 A Yes, sir.

14 Q Okay.

15 MR. NELSON: Okay. Could I ask the witness to be shown
16 Employer Exhibit 2? And --

17 HEARING OFFICER PEREDA: Actually, can you just give him --

18 MR. NELSON: Yeah, because --

19 HEARING OFFICER PEREDA: -- the stack, please?

20 MR. NELSON: Yeah, because he's going to be asked to look
21 at several.

22 HEARING OFFICER PEREDA: So regarding the exhibits, both
23 for the Employer and for the Union, during the break I redacted
24 the employees's Social Security number as that is personal
25 information that we usually do not include in hearing. So if

1 you guys review whatever I redacted, just go ahead and review
2 the exhibits.

3 MR. NELSON: Okay.

4 Q BY MR. NELSON: So Employer Exhibit 2 is payroll
5 adjustment sheet. And it says, "Plant foreman effective
6 April 1st, 2013." Do you see that?

7 A Effective" -- yeah. Ten -- effective date --

8 Q Of the plant --

9 A -- plant foreman. It says 4/1/13.

10 Q Right. Is -- is that about the time you became a plant
11 foreman?

12 A Probably. Yes.

13 Q All right. Now, if you can look at Employer Exhibit 2 --
14 or --

15 HEARING OFFICER PEREDA: He was --

16 MR. NELSON: -- 3. Excuse me.

17 Q BY MR. NELSON: This document lists you as -- as getting a
18 bonus in 2013 of \$250. Do you see that?

19 A Yes, sir.

20 Q Is that accurate?

21 A Yes.

22 Q All right. And at that point did you have greater
23 seniority than the employees who received a lesser bonus?

24 A I believe I was the leadman.

25 Q I asked you about your seniority --

1 us your version or what you know of the -- the time
2 Mr. Hofius -- there's been testimony that he showed up for work
3 under the influence of -- of some substance. Do you recall
4 that?

5 A I'm sorry. First name?

6 Q Cody Hofius.

7 A Oh, yes, sir.

8 Q Okay.

9 A I actually worked -- I actually worked days at first and
10 the night crew would take pictures with -- with the -- with the
11 night -- with the -- anyway, the plant phone and showed that he
12 would have already been -- already been doing or on whatever he
13 was on. So Ray had already gave him a warning before then.
14 And then -- and then come -- when I went to nights, he'd -- he
15 was working on the spirals and the guys down -- because I was
16 loading trucks, and the guys came down and said that he was
17 miscombobulated (sic) or whatever. So I confronted him and
18 then I called Ray Bross (phonetic) -- anyway, I called Ray and
19 Ray said to send him home. Because I told Ray that he said he
20 had a prescription, and so Ray was going to take care of it.
21 But the next morning Ray had let him go. Ray told me to send
22 him home and then Ray fired him the next day.

23 Q Okay. So you didn't fire him?

24 A No, sir.

25 Q Did you have authority to fire him?

1 A No.

2 Q During the time you were a lead person, whether it was
3 nighttime or daytime, were you instructed to report to a
4 supervisor if a employee was suspected of being under the
5 influence of a substance if it would affect their ability to
6 work?

7 A No. I -- no. I just figured it was the right thing to do
8 because the other gentlemen wouldn't want to work with him, you
9 know, and plus he -- we were on a federal mine site. You know,
10 he could get hurt. So I had to relay it through the chain of
11 command.

12 Q Okay. And there's been discussions about this -- this
13 group texting. Did you engage in the group texting?

14 A Oh, definitely.

15 Q And how frequently would you do that?

16 A Sometimes two to ten or more times a night.

17 Q Okay. And would you -- to whom would you send these group
18 texts?

19 A To Ted Hale, Travis, Chris and Ray.

20 Q All right.

21 A And then it changed and then it went from Ted -- or -- or
22 Ray, Ted and Keith.

23 Q Okay. And about what matters would you send these texts?

24 A For anything that was about the plant.

25 Q All right.

1 A From making sand to moving sand to when something broke
2 down. I was to ask what I was supposed to do to fix it.

3 Q Okay. Let me make sure I understand. You were asked or
4 you were asking?

5 A I was asking. I had to call to ask permission to do it.

6 Q Okay. If you had done any of those things on your own
7 without asking, do you believe you would have been disciplined?

8 A Yes, sir.

9 Q And why is it that you believe if you would have done
10 those things on your own initiative without checking you would
11 have been disciplined?

12 A I was told by --

13 MR. COOK: I object.

14 THE WITNESS: -- Ted Hale --

15 HEARING OFFICER PEREDA: Hold on one second.

16 MR. COOK: I -- I should have objected earlier, but this --
17 yeah, they say totally speculative.

18 MR. NELSON: Let me -- I'm sorry. Go ahead.

19 HEARING OFFICER PEREDA: I mean maybe you can explain, but
20 I don't -- I don't see why that question is relevant.

21 MR. NELSON: Well, let me --

22 Q BY MR. NELSON: Let me ask you this: During the time you
23 worked for Mineral Resources, did you ever deviate from company
24 policy?

25 A No, sir.

1 Q Did you have the authority to -- to enact any policies
2 other than company policies?

3 A No, sir.

4 Q Was it your understanding the entire time you worked for
5 Mineral Resources that you had to follow the company's
6 policies?

7 A Yes, sir.

8 Q Okay. You had no special authorities to -- to decide
9 which to follow and which not to follow?

10 A Yes, sir.

11 Q Okay. Now, the operation of the -- of the plant, whether
12 you're a daytime lead person or a nighttime lead person, was --
13 were the same things done on each shift?

14 A Yes, sir.

15 Q Okay. And were the same tasks performed each day?

16 A Yes.

17 Q Okay. And so a leader operator operated the loader in the
18 same he did each day?

19 A Yeah.

20 Q Okay. And the plant, throughout the years you worked
21 there, operated in the same manner?

22 A Yes.

23 Q Okay. And did you have the authority to change any of the
24 operations or make any operational decisions while you were an
25 employee of Mineral Resources during the time you were a lead

1 manager and Mike Butler was --

2 A Right under --

3 Q -- training to --

4 A -- him.

5 Q -- become manager?

6 A Yes, sir.

7 Q And this incident that involved Mike Butler, when did that

8 occur?

9 A That was probably a month before I went to nights. I

10 can't recall the exact date.

11 Q And so you were working days at the time?

12 A No. I just -- actually, I just had went to nights. And

13 the guys on the shift -- J -- Ray called me in early because we

14 were changing pumps, and the guys came to me. So I pulled Mike

15 and Ray aside, and then that's when I was told that.

16 Q So this incident between and you Mike Butler occurred just

17 after you started working the evening shift?

18 A Yes, sir. Yes, sir.

19 Q But Mike Butler did not work the evening shift?

20 A No.

21 Q He worked the day shift?

22 A He worked -- he stayed a little late to work the pumps

23 with us because we were rebuilding two of the pumps that we had

24 taken apart. So I got called in early. I actually started at

25 about 3:30 that day.

1 MR. COOK: Those are all the questions I have.

2 HEARING OFFICER PEREDA: All right. I have -- I have a few
3 questions for you. When you had this incident with Mike was
4 Mike also an employee?

5 THE WITNESS: Mike Butler?

6 HEARING OFFICER PEREDA: Yes.

7 THE WITNESS: Yes, ma'am.

8 HEARING OFFICER PEREDA: So he was not a -- a -- the plant
9 manager --

10 THE WITNESS: No.

11 HEARING OFFICER PEREDA: -- at this time?

12 THE WITNESS: At that time he was a mechanic. I thought he
13 was a maintenance man. That's what I was told.

14 HEARING OFFICER PEREDA: Okay. And do you remember about
15 when it was that you went from the day position to the night
16 leadman position?

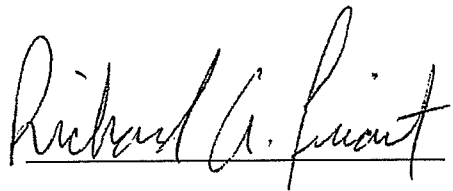
17 THE WITNESS: I want to say maybe the beginning of
18 December, I think.

19 HEARING OFFICER PEREDA: So you mentioned that on -- you
20 testified that on testified that on September 27, 2013 you were
21 demoted to the leadman position. What happened at that time
22 that -- that -- why do you think you were demoted?

23 THE WITNESS: Because I was -- I was actually -- actually,
24 that was my birthday. I was getting ready to leave and Ted
25 Hale told me to stay because him and Travis had to talk to me.

C E R T I F I C A T I O N

1
2 This is to certify that the attached proceedings before the
3 National Labor Relations Board (NLRB), Region 20, Case Number
4 20-RC-125608, Mineral Resources, LLC, and Operating Engineers
5 Local Union 3, International Union of Operating Engineers, AFL-
6 CIO, at the Yuba County Government Center, Board Chambers, 915
7 8th Street, Marysville, California, 95901, on Wednesday, April
8 23, 2014, at 11:00 a.m. was held according to the record, and
9 that this is the original, complete, and true and accurate
10 transcript that has been compared to the reporting or
11 recording, accomplished at the hearing, that the exhibit files
12 have been checked for completeness and no exhibits received in
13 evidence or in the rejected exhibit files are missing.

14
15
16
17 

RICHARD FRIANT

Official Reporter